IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Writ Petition No. 2438 of 2006

1. Sachin Sudhir Karkhanis
and others ..Petitioners

vs.

Kiran Anant Karnik ..Respondent

Miss Gouri Godse for petitioners.
Mr.Atul G.Damle for respondent.

CORAM: S.B.MHASE J.
19th April, 2006

P.C.

1. Heard both the learned Counsel.

2. Rule. Returnable forthwith.

3. The order dated 21st March, 2006 passed by Joint Civil Judge, Sr.Dn., Kalyan below Exh.45 in Special Civil Suit No.171 of 2005 is under challenge. The order is as follows:

> "1. The application Exh.45 is allowed on depositing of claim amount of Rs.05,42,000/- by defendant no.1 in the Court within 15 days from the date of this order. On deposit of amount condition is precedent.
>
> 2. If the Defendant No.1 failed to comply with the condition the permission granted to the Defendant No.1 will automaticallasy standsl cancelled without

passing any separate order."

4. Thus, by the impugned order the petitioner's written statement is allowed to be taken on record. However, the petitioners are directed to depiosit the full decreetal amount as a condition precedent for acceptance of the written statement. The petitioners/defendants are aggrieved by that order and, therefore, have approached this Court. No doubt, when the order of no written statement is passed and written statement is to be allowed after having satisfied that there were exceptional circumstances because of which the party could not file the written statement the Court may impose certain conditions but those conditions must be of such nature as can be obeyed by the party. The conditions rendering satisfaction of likely decree and/or making it impossible for the party to perform shall not be imposed. Otherwise the interest of justice and fair play suffer and the Joint Civil Judge, Sr.Dn., has lost sight of this approach unfortunately. The learned counsel for the plaintiffs/respondents also submtited that even though it may not be proper to direct deposit of the total decreetal amount some amount may be directed to be deposited and/or cost may be imposed. In fact, in such circumstances cost is the appropriate remedy. Therefore, the order dated 21st March, 2006 is hereby modified. The order allowing the written statement of the present petitioners is confirmed. The direction given to deposit Rs.5,42,000 as condition precedent is hereby quashed and set aside.

Instead the petitioners are hereby directed to pay cost of Rs.1000/- With these directions the petition is disposed of. Rule accordingly.

(S.B.MHASE J.)